

Securities and Exchange Commission

§ 200.735-8

(h) The Director of Personnel, or his designee, is authorized to approve or disapprove requests for outside or private employment under this rule, except as to those cases which, in his judgment, should be considered and decided by the Commission. An employee may appeal a disapproved request to the Commission. The written appeal, submitted through the Director of Personnel, shall give reasons why the proposed outside or private employment is consistent with this rule. The Director of Personnel may not approve proposed outside or private employment which is absolutely prohibited by these rules. The Commission may, in a particular case, approve such employment.

[45 FR 36064, May 29, 1980; 45 FR 40975, June 17, 1980; 48 FR 39216, Aug. 30, 1983; 50 FR 45603, Nov. 1, 1985; 73 FR 32226, June 5, 2008; 75 FR 42276, July 20, 2010]

§ 200.735-5 Securities transactions.

Securities transactions by members and employees must comply with the provisions of 5 CFR 4401.102 (Prohibited and restricted financial interests and transactions).

[75 FR 42277, July 20, 2010]

§ 200.735-6 Action in case of personal interest.

Members and employees shall comply with the requirements of 5 CFR part 2640 (Interpretation, exemptions, and waiver guidance concerning 18 U.S.C. 208 (Acts affecting a personal interest)).

[75 FR 42277, July 20, 2010]

§ 200.735-7 Negotiation for employment.

Members and employees shall comply with the requirements of 18 U.S.C. 208 (Acts affecting a personal interest) and 5 CFR part 2635, subpart F (Seeking other employment). *See* § 200.735-4(f)(2) of this subpart.

[75 FR 42277, July 20, 2010]

§ 200.735-8 Practice by former members and employees of the Commission.

(a) Members and employees and former members and employees shall comply with the requirements of 18 U.S.C. 207 and 5 CFR part 2641 (Post

employment conflict of interest restrictions). Members and employees and former members and employees should be aware that, among other restrictions, 18 U.S.C. 207 generally prohibits a former member or employee from knowingly communicating to or appearing before a Federal agency with the intent to influence a particular matter involving specific parties in which that person personally and substantially participated while at the Commission.

(b)(1) Any former member or employee of the Commission who, within 2 years after ceasing to be such, is employed or retained as the representative of any person outside the Government in any matter in which it is contemplated that he or she will appear before the Commission, or communicate with the Commission or its employees, shall, within ten days of such retainer or employment, or of the time when appearance before, or communication with the Commission or its employees is first contemplated, file with the Secretary of the Commission a statement which includes:

(i) A description of the contemplated representation;

(ii) An affirmative representation that the former employee while on the Commission's staff had neither personal and substantial responsibility nor official responsibility for the matter which is the subject of the representation; and

(iii) The name of the Commission Division or Office in which the person had been employed.

(2) Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirements of this paragraph do not apply to

(i) Communications incidental to court appearances in litigation involving the Commission; and

(ii) Oral communications concerning ministerial or informational matters or requests for oral advice not otherwise prohibited by paragraph (a) of this section.

(c) As used in this section, the term *appear before the commission* means

physical presence before the Commission or its employees in either a formal or informal setting or the conveyance of material in connection with a formal appearance or application to the Commission. As used in this section the term *communication with intent to influence* does not encompass communications which are not for the purpose of influencing the Commission or any of its employees or which, at the time of the filings, are reasonably believed not to involve any potential controversy. As used in this section, the term *representative* or *representative capacity* shall include not only the usual type of representation by an attorney, etc., but also representation of a corporation in the capacity of an officer, director or controlling stockholder thereof.

(d)(1) Partners or associates of any person disqualified from appearing or practicing before the Commission in a particular matter are also disqualified. Such partners or associates (the *firm*) may request a waiver of this prohibition from the Commission by writing a letter to the General Counsel of the commission setting forth the facts of the proposed representation and the individual's disqualification. In appropriate situations, a firm may request a generic waiver with respect to a number of different matters. Upon the advice of the Office of the General Counsel, the Commission, or the General Counsel exercising delegated authority, will advise the requestor of the Commission's response.

(2) Waivers ordinarily will be granted where the firm makes a satisfactory representation that it has adopted screening measures which will effectively isolate the individual lawyer disqualified from participating in the particular matter or matters and from sharing in any fees attributable to it. It will be considered significant for purposes of this determination that:

- (i) The firm had a pre-existing securities law practice prior to the arrival of the disqualified attorney;
- (ii) The matter was previously the subject of consideration by the firm or the client was already advised by the firm;
- (iii) In cases where the matter or client became the subject of consider-

ation by the firm subsequent to the firm's employment of the lawyer individually disqualified, that the matter was not brought to the firm because of the disqualified attorney.

(3) Notwithstanding the existence or non-existence of any of these factors, no waiver will be issued if the proposed representation would create a significant appearance of impropriety or would otherwise adversely affect the interests of the government.⁵ All proceedings with respect to waivers shall be a matter of public record except to the extent that such public disclosure might violate attorney-client privilege or breach the attorney's obligation to preserve the confidences and secrets of this or her clients, reveal the existence of ongoing private investigations, interfere with law enforcement proceedings, or otherwise be inconsistent with the public interest.

(e) Persons in doubt as to the applicability of any portion of this section may apply for an advisory ruling of the Commission.⁶

[45 FR 36064, May 29, 1980, as amended at 50 FR 23669, June 5, 1985; 75 FR 42277, July 20, 2010]

§ 200.735-9 Indebtedness.

Members and employees shall comply with the requirements of 5 CFR 2635.809 (Just financial obligations).

[75 FR 42277, July 20, 2010]

§ 200.735-10 Miscellaneous statutory provisions.

Each member and employee is responsible for acquainting himself or herself with the statutory provisions

⁵For example, no waiver will be granted if, during the course of representing a client who has an interest with respect to a matter before the Commission, a firm employs, or accepts as a partner, a member of the staff or of the Commission who at any time during the course of that representation had direct and substantial responsibility for the same matter, and whose departure would result in a significant adverse impact upon that matter at the Commission.

⁶Attention of former members and employees is directed to Formal Opinion 342 of the Committee on Ethics of the American Bar Association, 62 A.B.A.J. 517 (1975) and to 18 U.S.C. 207.